

CIVIL SERVICE COMMISSION MINUTES

March 6, 2002

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Roy Dixon
Sigrid Pate
Mary Gwen Brummitt

Absent was: None.

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
March 6, 2002

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>2,3,4,5,6,8,10,11,12</u>	<u>9,13</u>		<u>8</u>

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Brummitt: **Gilbert Valero**, former Eligibility Supervisor, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSa).

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of March 6, 2002.

CONFIRMATION OF ASSIGNMENTS

2. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Sharon V. Epps**, former Correctional Deputy Probation Officer II, appealing an Order of Removal and Charges from the Department of Probation.

3. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Jamie R. Lee**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

4. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Nailah Kathrada**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

5. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Bounma Sanmur**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Item Nos. 2-5 were pulled for discussion by Commissioner Austin regarding consolidation. Larry Cook, Executive Officer explained that there may be approximately 28 appeals that are similar to Item Nos. 2-5, above. He suggested that a possibility of consolidation for purposes of efficiency and economy could be possible if all parties agreed. Mr. Cook also suggested that 2 hearing officers be assigned due to the significance of the issues in these cases.

SEIU Local 535, represented by Wendell Prude, requested that at the onset, the first 4 appeals be heard separately. He advised the Commission that the Union has not yet made a decision regarding the remainder of the forthcoming appeals.

William Songer, Sr. Deputy County Counsel, representing the Probation Department, commented that consolidation would streamline the process. He agreed with Mr. Prude that each case contained uncommon issues, but he opined that the common features are predominant, and would prevent duplicate effort. Mr. Songer suggested that a pre-hearing conference be scheduled to decide this issue.

Commissioner Newman agreed with Mr. Songer's suggestion regarding a pre-hearing conference to look at the first 4 cases regarding common issues. The Commission concurred with Messrs. Songer and Newman. Commissioners Brummitt and Newman were assigned as hearing officers and a pre-hearing conference will be held with a report back at a future Commission meeting.

Motion by Dixon to approve confirmation of assignments and a pre-hearing conference; seconded by Newman. Carried.

DISCIPLINES

Findings

6. Commissioner Brummitt: **Gilbert Valero**, former Eligibility Supervisor, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSa).

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct unbecoming of an Officer or Employee of the County (sexual harassment; consumption of alcohol); Cause II - Insubordination; Cause III - Discourteous Treatment of Other Employees; Cause IV - Failure of good behavior; and Cause V - Acts incompatible with or inimical to the public service. Employee has been employed by the HHSa for 23 years. His performance appraisals have generally contained overall ratings of standard. At the time of his removal, he held the classification of Eligibility Supervisor at the Agency's North East Family Resource Center. Employee has had at least four incidents of prior discipline, including a Letter of Warning for Sexual Harassment, issued on May 9, 1996. His prior discipline appeared clustered around 1996/1997. The Agency proved, and Employee admitted, that he often engaged in "touching behavior", e.g., neck massages, with several women in the work place. However, the testimony and evidence did not demonstrate that the named women were offended by such behavior when directed at other employees.

Employee did not deny having consumed alcohol, but denied inebriation. He admitted most of the incidents alleged in the charges, seeking only to dispute the implication of each charge or to explain the context of each incident. Less convincing was Employee's attempt to minimize his conduct by arguing that he was simply a "touchy" person, that his behavior was cultural and acceptable in the mostly Hispanic unit, and the unit was like "family". Employee also stated that he suffered from diminished mental capacity since suffering an unspecified assault in 1997. However, he failed to produce any medical evidence related to the assault, or to demonstrate how the affects of the assault caused the incidents set forth in the charges. Moreover, he did not produce evidence that he sought any assistance or treatment for behavior problems related to the assault.

While Employee was able to mitigate some of the charged behavior, the overall fact of significant inappropriate behavior remains. Employee displayed poor judgment, especially in light of his prior disciplinary record. The nature and repetition of his conduct warrant termination. The Agency proved, by a preponderance of evidence, the charges contained in the Order of Removal and Charges. Employee is guilty of Cause I, Cause II, Cause III, Cause IV, and Cause V. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;
Seconded by Newman. Carried.**

SELECTION PROCESS

7. Wilfredo Perez on behalf of **Marites Perez**, Administrative Trainee, HHSA, appealing the Department of Human Resources' decision to disqualify her from further competing in the exam process for the classification of Administrative Analyst I.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

8. Barrett J. Foerster, Esq. on behalf of **Alfred LeSane**, Deputy Public Defender II, appealing his non-selection to the classification of Deputy Public Defender III by the Department of the Public Defender.

RECOMMENDATION: Deny Request.

Mr. Foerster, on behalf of appellant requested that this matter be withdrawn.

Withdrawn.

9. **Rosemarie de Gracia**, Associate Accountant, HHSA, appealing the Department of Human Resources' decision that she is ineligible to compete in the recruitment for the classification of Senior Accountant.

RECOMMENDATION: Continue to next meeting pending input from HHSA.

Continued.

STIPULATED AGREEMENT

Findings

10. Commissioner Brummitt: Richard Pinckard, Esq. on behalf of **William Haggerty**, Deputy Sheriff-Detentions, appealing an Order of Suspension and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee appealed a written Order of Suspension and Charges suspending him for ten working days in his class and position of Deputy Sheriff-Detentions in the Sheriff's Department. However, before the matter could be heard, representatives of the two parties involved entered into a Stipulation. The hearing officer reviewed the Stipulation and taking everything into consideration, believes that the public would be best served if the Commission accepts this document and by reference incorporate the terms and conditions therein. It is therefore recommended that the Stipulation dated February 4, 2002 be approved by the Civil Service Commission; that the Order of Suspension and Charges be reduced from ten (10) working days (85 hours), to seven (7) working days (59.5 hours); that Employee shall be awarded back pay and benefits for three (3) working days (25.5 hours); that the Civil Service Commission accepts the withdrawal of Employee's appeal of the Order of Suspension and Charges; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Brummitt to approve Findings and Recommendations; seconded by Newman. Carried.

INVESTIGATIONS

11. **Janet Arman**, Senior Fingerprint Examiner, Sheriff's Department, requesting an investigation into alleged improper personnel practices in the HHSA. (See No. 12 below.)

RECOMMENDATION: Deny Request.

Ms. Arman addressed the Commission regarding her request for a Rule XI investigation. She explained that her request was late due to the fact that she did not have knowledge of the process and did not know where to go for assistance.

Mr. Cook advised the Commission that Staff's recommendation to deny Ms. Arman's request was due to the time lapse of 8 months since the incident(s) occurred.

The Agency, represented by Lynette Mercado, requested that the Commission review the Agency's response previously provided. She stated that the Agency was not in violation of the MOA regarding Ms. Arman's separation during probation.

The Commission found that the time element would make contesting the factual allegations very difficult in this matter.

Motion by Newman to deny request; seconded by Dixon. Carried.

OTHER MATTERS

Seal Performance Appraisal

12. **Janet Arman**, Senior Fingerprint Examiner, Sheriff's Department, requesting the sealing of a Performance Appraisal for the period February 23, 2001 to May 23, 2001. (See No. 11 above.)

RECOMMENDATION: Deny Request.

Ms. Arman felt she had signed a performance appraisal under duress. She requested that the appraisal be sealed, or changed to overall "standard".

Lynette Mercado from the Agency explained that Ms. Arman did not request an appeal, verbally or in written form. She further explained that the Agency has an in-house personnel officer who could have assisted Employee with any questions and/or processes.

Motion by Newman to deny request to seal performance appraisal; seconded by Pate. Carried.

Evidentiary Hearing

13. **Everett Bobbitt, Esq.**, on behalf of **Tom Basinski**, District Attorney Investigator, requesting an independent review in an evidentiary hearing based on a memorandum from a District Attorney Lieutenant to Mr. Basinski that constitutes an alleged reprimand.

Recommendation: Deny Request.

Mr. Bobbitt addressed the Commission stating that his client's First Amendment Rights have been violated and is therefore appealing the memorandum constituting an alleged reprimand on Employee's behalf.

Anthony Albers, Sr. Deputy County Counsel, explained that the Memorandum was a letter of notice of an investigation, not denial of promotion, punitive action, nor a reprimand, therefore an appeal is not warranted.

Commissioner Newman suggested that this matter be tabled until the next Commission meeting in hopes of motivating the parties to discuss this matter and come to a mutually beneficial outcome. Both counsel agreed to this suggestion, as did Ralph Shadwell, Sr. Deputy County Counsel, advising the Commission. Mr. Shadwell further advised that if Appellant is found to have been reprimanded, he does have an administrative right to appeal with the Department (rather than the Civil Service Commission).

Motion by Newman to table this item until the next Civil Service Commission Meeting. Motion carried.

Executive Officer

14. Commissioner Austin: Authorize Larry Cook to continue functioning as the Commission's Executive Officer after March 21, 2002 under the provisions of California Government Code Sections 31680.2 and 31680.6 at his current hourly rate of pay.

Approved.

Extension of Temporary Appointments

15. Health and Human Services Agency

- A. 1 Departmental Personnel and Training Administrator (Linda Insinger)
- B. 1 Food Services Worker (Roxanne Rodriguez)
- C. 9 Protective Services Worker I's (Christine Vuong, Joseph Jones, Tiffany Butterfield, Christina Mayo, Carla Angeles, Tatiana Montague, Dianne Kuhlmann, Angela Lankford, Lynette Miller)
- D. 3 Recreational Care Worker Trainees (Leticia Demello, Alfreeda Deal, Amber Wilkinson)
- E. 1 Social Worker I (Jacqueline Alvarez)

RECOMMENDATION: Ratify Item No. 15.

Item No. 15 ratified.

16. Public Input.

Everett Bobbitt, Esq. requested to speak to Item Nos. 2-5 above. Mr. Bobbitt offered his experience and knowledge regarding consolidation of cases with like issues. It is his opinion that consolidation works well in these situations, economically as well as from an efficiency point of view. He urged the Commission to consider consolidation.

ADJOURNMENT: 3:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 20, 2002.